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**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 26, 2015, under Wis. Admin. Code § DHS 10.55, to review a decision by the Care Wisconsin First, Inc. in regard to Family Care-Partnership (FC), a Medical Assistance-related program, a hearing was held on September 29, 2015, at Madison, Wisconsin. Hearings set for July 2, August 4, and August 12, 2015, were rescheduled at the petitioner's request. The hearing record was held open for post-hearing submissions from the parties, which were received.

The issue for determination is whether the agency correctly denied the petitioner's request for a replacement scooter.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED] Care Manager  
Care Wisconsin First, Inc.  
2802 International Lane  
Madison, WI 53704-3124

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner is a resident of Dane County.

- [REDACTED]
2. The petitioner, age 64, has diagnoses that include diabetes, obesity (242 pounds), fibromyalgia, osteoarthritis, degenerative disc disease, depression, anxiety, and GERD. She requires assistance with the activities of daily living (ADLs) of bathing and dressing, but is independent in eating, toileting and transfers. She ambulates with a four-wheeled walker, and sometimes walks around her apartment by leaning on furniture as needed. The petitioner is intelligent, fully communicative, and is capable of managing her affairs. She resides alone in a two-bedroom apartment, with a bathroom that is not handicapped accessible.
  3. The petitioner is enrolled in the FC program and has an individualized care plan (Plan). Her November 2014 through May 2015 Plan included acupuncture, warm water treatment twice weekly, and supportive home care (SHC). On March 19, 2015, the petitioner requested an evaluation to be used in conjunction with the simultaneously requested purchase of a replacement power scooter. She has an old scooter, allegedly in disrepair, which she has been unable to use since the fall of 2014. The program agency/CMO denied that request on April 13, 2015.
  4. The petitioner already has a four-wheeled walker for in-home ambulation. She seeks a scooter that would be used outside of her apartment. Transportation to medical appointments is provided by the CMO. In the community, the petitioner is able to use cabs, paratransit (which she dislikes), and in-store power scooters in stores that have them. She desires a power scooter for attending social events in the community, such as community festivals. The petitioner's preferred new power scooter is the Hoveround Technique XHD power chair, at a cost of approximately \$3,895.

## **DISCUSSION**

The Family Care program is supervised by the Wisconsin Department of Health Services, and is designed to provide appropriate long-term care services for elderly or disabled adults. It is authorized at Wis. Stat. § 46.286, and is further described at Wis. Admin. Code, ch. DHS 10.

The CMO must develop an Individual Service Plan (ISP) in partnership with the client. Wis. Admin. Code § DHS 10.44(2)(f). The ISP must reasonably address all of the client's long-term needs to assist the client to be as autonomous as possible, while also being cost effective. While the client has input, the CMO does not have to provide all services the client desires if there are less expensive alternatives to achieve the same results. *Id.*, 10.44(1)(f). ISPs must be reviewed periodically. *Id.*, 10.44(j)(5).

The state code language on the scope of permissible services for the FC reads as follows:

### **DHS 10.41 Family care services. ...**

(2) SERVICES. Services provided under the family care benefit shall be determined through individual assessment of enrollee needs and values and detailed in an individual service plan unique to each enrollee. As appropriate to its target population and as specified in the department's contract, each CMO shall have available at least the services and support items covered under the home and community-based waivers under 42 USC 1396n(c) and ss.46.275, 46.277 and 46.278, Stat., the long-term support services and support items under the state's plan for medical assistance. In addition, a CMO may provide other services that substitute for or augment the specified services if these services are cost-effective and meet the needs of enrollees as identified through the individual assessment and service plan.

**Note:** The services that typically will be required to be available include *adaptive aids*; *adult day care*; *assessment and case planning*; *case management*; *communication aids and interpreter services*; *counseling and therapeutic resources*; ... *personal care services*; *personal emergency response system services*; ... *durable medical equipment* and *specialized*

medical supplies; outpatient speech; physical and occupational therapy; supported employment; *supportive home care*; transportation services; ... .

[emphasis added]

Wis. Admin. Code §DHS 10.41(2) (June, 2009). Durable medical equipment is specifically included in the list of covered services in the statutory note above. The next question is whether the equipment requested here, a repaired or newly purchased power scooter for out of home use, is necessary to meet her medical needs. The burden of proof rests with the petitioner, and she has not met it.

The petitioner failed to meet her burden of proving by a preponderance of the credible evidence that she requires the requested scooter. Generally, power chairs are not meant to provide a person's transportation needs outside of the home. Use of a power chair for an ambulatory person is a questionable practice, due to concern that unused muscles will weaken. This petitioner is able to complete her ADL's without a power chair, because she is able to walk. It has not been established in this record that she could even fit a power chair into her bathroom and bedroom. Further the petitioner is able to take a cab and her walker to medical appointments, her warm water therapy sessions, and business meetings. She successfully appeared without a power scooter at this office during her in-person hearing; she also requested that the hearing be in-person (as opposed to the more convenient telephonic hearing), which is surprising for someone with limited mobility. An in-home caregiver routinely assists the petitioner with grocery shopping and laundry. The petitioner alluded to infrequent episodes in which the SHC worker is not able to finish all of the laundry. If that is so, the petitioner may wish to request a modest increase in her SHC time.

### **CONCLUSIONS OF LAW**

1. The CMO correctly denied the petitioner's request for a power scooter.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in

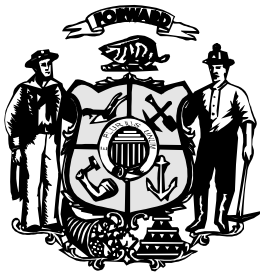
this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 17th day of December, 2015

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on December 18, 2015.

Care Wisconsin First, Inc  
Office of Family Care Expansion  
Health Care Access and Accountability